IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 321 OF 1995

The State of Maharashtra ...Appellant.

Versus

1. Sandeep Gangaram Sawant,
   Age 22 years,

2. Mahesh Vishnu Palkar,
   Age 22 years,

   Both are R/o. Pinguli,
   Shetkarwadi, Tq. Kudal, ...Respondents.
   Dist. Sindhudurg (Ori. accused)

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Shri. A.S. Shitole, A.P.P. for appellant-State.

Shri. A.S. Khandeparkar, Adv. for Respondents.

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CORAM: SMT. V.K. TAHILRAMANI, J.

DATED: 25TH OCTOBER, 2004

ORAL JUDGMENT:-

1. Through this appeal, the appellant i.e. the State of Maharashtra has challenged the judgment and order dated 17.04.1995 passed by the learned J.M.F.C. Kudal, Dist. Sindhudurg in Regular Criminal case No.36/1993. By the said judgment and order the respondents i.e. original accused Nos.1 and 2 have been acquitted of the offence under Section 379 r.w. 34 of I.P.C.

2. Briefly stated the prosecution case is as under:-

. That the complainant P.W.1 Appa Gavade as well as the respondents were residents of Shetkarwadi, Pinguli. The complainant used to cultivate his lands at Pinguli. He installed two H.P. Engine in the said lands. On 5.2.93 he returned back from his field in the evening. On that day the Engine was there in proper condition. On the second day i.e. on 6.2.93 the complainant's daughter P.W.4 Seema had been to the field at about 6.00 a.m. She returned back saying that the pipes were damaged and Engine parts worth about Rs.2,000/- were stolen. P.W.3 Jeejabai i.e.the wife of the complainant informed him that on the earlier night at about 9.00 p.m. she had seen both the accused proceeding towards the field of the complainant and returning back by the same road after one - one and half hours. Hence, complainant suspected that both the accused had committed theft of Engine parts and hence, he lodged his complaint (Exh.16). The accused came to be arrested.

3. After completion of investigation charge sheet came to be filed. Charge (Exh.8) came to be framed

against both the accused under Section 379 r.w. 34 of I.P.C. Both the accused pleaded not guilty to the said charge and claimed to be tried. Their defence is that of total denial. On going through the evidence adduced by the prosecution, the learned Magistrate acquitted both the accused of the said offence. Hence, this appeal.

4. I have heard Shri. Shitole, the learned A.P.P. for the appellant-State and Shri. Khandeparkar for the respondents i.e. original accused. I have also perused the entire record pertaining to the present case as well as the judgment and order of the learned Magistrate. After carefully considering the matter, I am of the opinion that the order of acquittal deserves to be maintained.

5. In the present case, there is no eye witness to the incident. Both the accused have been implicated on the basis of the fact that P.W.3 Jeejabai at about 9.30 p.m. on 5.2.93 had seen both the accused proceeding on the way towards their land i.e. the land of the complainant. They returned back after about one-one and half hours on the said road and on the next day i.e. on 6.2.93 when P.W.4 Seema went to the field, she found that Engine parts had been stolen. It is pertinent to note that no witness has actually seen any of these

accused persons in the field of the complainant. P.W.3 Jeejabai had only seen them on the road which led to the field of the complainant. The road was a common road and it was not that it only led to the field of the complainant. Moreover, P.W.3 Jeejabai does not state that when she saw the accused persons returning that they were carrying anything with them.

6. The prosecution has relied on the circumstance that the Engine parts were recovered at the instance of both the accused persons. In this respect it is pertinent to note that a common memorandum (Exh.22) has been recorded in respect of both the accused persons making a statement and making the discovery. The learned Magistrate came to the conclusion that the said discovery could not be relied upon. One of the reasons for not relying on the said discovery is that both the accused persons have not disclosed before the police as to where actually they had kept the articles. Moreover, the learned Magistrate has observed that there is no signature on the panchanama. In these circumstances, the learned Magistrate has not placed any reliance on the discovery of Engine parts at the instance of both the accused.

7. Apart from this one cannot loose sight of the

fact that the impugned order of acquittal was passed on 17.4.1995 and nine and half years have elapsed since then. The property which was stolen was worth about Rs.2000/-, in such case, I am of the opinion that in petty cases like the instant one on account of efflux of time also it is not proper to disturb the order of acquittal after such a long period.

8. It is well settled that if the view of the acquittal would have been reasonably arrived at then the mere circumstance that the appellate court would have taken different view would be no ground to interfere. In this connection there is no dearth of authority but to eschew prolixity, I am only referring to one of them i.e. **AIR 1971 SC 66 (Khedu Mohton and others Vs. The State of Bihar).** In my view, the view of acquittal was a reasonable and a possible view.

9. In the circumstance, I find no merit in this appeal and the same is dismissed.